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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,018	12/16/2003	David M. Munson JR.	77535/00002	5591
23380 7590 10/28/2008 TUCKER ELLIS & WEST LLP 1150 HUNTINGTON BUILDING 925 EUCLID AVENUE CLEVELAND, OH 44115-1414				
EXAMINER RICHMAN, GLENNE				
ART UNIT		PAPER NUMBER		
3764				
NOTIFICATION DATE		DELIVERY MODE		
10/28/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@tuckerellis.com
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Office Action Summary

Application No.

10/737,018

Applicant(s)

MUNSON, DAVID M.

Examiner

/Glenn Richman/

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-40 is/are pending in the application.
- 4a) Of the above claim(s) 1-29 and 31-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claim 1 is rejected under 35 U.S.C. 102(a) as being anticipated by Comeau.

Comeau discloses means adapted for receiving a controllable non-compressible pressurized flow of a fluid having a selectable flow rate associated therewith (bladder 1); outlet means adapted for discharging the pressurized flow of fluid in a selectable direction so as to generate a force in a direction opposite the direction of the flow of fluid; means (3a, abstract), responsive to the flow of the fluid, adapted for generating a force along at least one of a plurality of selected directions (abstract); and directing means adapted for directing the flow of the fluid from the receiving means to the outlet means (abstract); and means adapted for transferring the generated force to a user of from the apparatus to an associated user (bladder 2), wherein the transferred force is adapted to supply physical resistance training to the associated user (abstract).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Comeau in view of Lighter.

Comeau does not disclose a rate interface adapted to enable the selection of the rate of discharge of the fluid.

Lighter discloses disclose a rate interface adapted to enable the selection of the rate of discharge of the fluid (claim 7).

It would have been obvious to use Lighter's rate interface, with Comeau's device, as it is well known as taught by Lighter, to provide a rate interface with a resistance trainer to provide a variable rate of resistance.

Lighter further discloses the rate interface is adapted to be controlled by at least one of the user of the apparatus a person assisting the user in the user's use of the apparatus, and an electronic device adapted to automatically control the rate interface (claim 7), a direction interface adapted to enable the selection of the direction of the discharge of the fluid (claim 7), the direction interface is adapted to be controlled by at least one of the user of the apparatus, a person assisting the user in the user's use of the apparatus, and an electronic device adapted to automatically control the rate interface the apparatus further comprises a source of pressurized fluid (claim 7), the means adapted for transferring the force to the user comprises a user interface adapted for interfacing with at least one of a plurality of parts of a body of the user (fig. 1), the user interface is adapted to interface with at least one of the user's head, foot, feet,

hand, hands, arm, arms, leg, legs and torso (fig. 1), the apparatus is adapted to be moveable along at least one axis (fig. 1).

Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Comeau in view of Blaszkowki.

Comeau does not disclose the outlet means further comprises jet nozzle means adapted for narrowing the outlet so as to increase the pressure of the fluid during the discharge thereof.

Blaszkowki discloses an outlet means comprises jet nozzle means adapted for narrowing the outlet so as to increase the pressure of the fluid during the discharge thereof col. 1, lines 35 – et seq.

It would have been obvious to use Blaszkowki's nozzle means with Comeau's device, as it is well known as taught by Blaszkowki to use a nozzle means for controlling a pressure of a discharge.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Glenn Richman/ whose telephone number is 571-272-4981. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on (571)272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Glenn Richman/
Primary Examiner
Art Unit 3764